



CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

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April 13, 2001

CRIMINAL LAW ISSUE

STATE v. DOWNEY, No. 79A05-0010-CR-415, ___ N.E.2d ___ (Ind. Ct. App. Apr. 6, 2001).
RILEY, J.

The State argues that the trial court improperly dismissed the habitual substance offender information prior to trial because the legislature intended to permit double enhancement for marijuana possession: once to a Class D felony for a prior marijuana conviction, and an additional enhancement under the habitual substance offender statute. . . .

....
In *Ross* [v. *State*, 729 N.E.2d 113 (Ind. 2000)], our supreme court determined that the issue was whether a conviction once enhanced by the specific sentencing scheme of the handgun statute can be enhanced again by the general habitual offender statute. [Citation omitted.] . . . The court in *Ross* reasoned that the handgun statute can be viewed as the more specific statute while the general habitual offender statute remains a general prohibition on repeat offenses regardless of the activity involved. [Citation omitted].

....
Using the analysis employed by *Ross*, the marijuana possession statute can be viewed as the more detailed and specific statute while the general habitual substance offender statute is a general prohibition on repeat offenses encompassing alcohol and drugs. . . .

Therefore, based upon our supreme court's holding in *Ross*, we hold that in light of the statutory construction favoring more specific statutes as opposed to more general ones, a misdemeanor charge under the marijuana possession statute, once elevated to a Class D felony due to a prior marijuana possession conviction, should not be enhanced again under the general habitual substance offender statute.

....
DARDEN, J., concurred.

ROBB, J., filed a separate written opinion in which she dissented, in part, as follows:

Because the habitual substance offender statute now specifically references "possession" in the definition of a "substance offense," and because the statute had been amended to so say, there is a clear indication of legislative intent to impose double punishment pursuant to the habitual substance offender statute for any offense alleging possession of a drug. Thus, the State properly charged Downey with being an habitual substance offender, and the trial court improperly dismissed the information.

...

CIVIL LAW ISSUES

DURHAM v. U-HAUL INT'L, No. 49S02-0005-CV-294, ___ N.E.2d ___ (Ind. Apr. 10, 2001).
BOEHM, J.

We adhere to precedent that punitive damages are not recoverable in an action brought under the wrongful death statute. We also hold that the wrongful death statute provides the only remedy against a person causing the death of a spouse and there is no independent claim against this person for loss of consortium. Finally, we hold that loss of consortium damages against a person causing the death of a spouse are not cut off by the death of that spouse. Rather, they are to be measured by the life expectancy of the deceased spouse or the surviving spouse, whichever is shorter.

....

Several defendants moved for partial summary judgment on the issues of punitive damages and Wade's loss of consortium claim. The motions contended that no punitive damages are recoverable under the wrongful death statute and that Wade is limited to a wrongful death claim and may not pursue a separate loss of consortium claim for Kathy's death. The trial court held that (1) Wade's loss of consortium claim could proceed, including a claim for punitive damages; and (2) punitive damages were not recoverable under the wrongful death statute. The Court of Appeals affirmed the holding that a consortium claim could be asserted but reversed the grant of summary judgment on the issue of punitive damages. The court held that principles of statutory construction, case law, and policy support recovery of punitive damages in a wrongful death claim. Durham v. U-Haul Int'l, 722 N.E.2d 355 (Ind. Ct. App. 2000).

....

Failure to address punitive damages cannot be attributed to legislative indifference to the wrongful death statute. The legislature has amended the wrongful death statute approximately once a decade since the 1930s. [Footnote omitted.] But despite these many other changes to the Act, the legislature has never amended it to address explicitly the availability of punitive damages. We can only conclude that the legislature is content with the consistent line of cases finding punitive damages unavailable. Finally, where the legislature has explicitly spoken to this issue in other contexts, its attitude is hostile to punitive damages, either prohibiting them or setting forth an exhaustive list of recoverable items that does not include punitive damages.

The net effect of the Court of Appeals' decision is to disregard a long line of case law

finding the purpose of the wrongful death statute to be compensatory, and concluding that punitive damages are therefore not recoverable.

....

The Court of Appeals examined Indiana's view of punitive damages and concluded that "Indiana is increasingly receptive to imposing exemplary damages" and that "Indiana no longer uses exemplary damages solely for punishment or retribution." Durham, 722 N.E.2d at 362.

We disagree with the Court of Appeals that there is an identifiable trend in Indiana law in favor of expanding access to punitive damages. The legislature has the power to enlarge the scope of punitive damages, including under the wrongful death statute, but has seen fit to

reduce the incentive to seek punitive damages. [Citations omitted.] And in several instances the legislature has explicitly curtailed their availability altogether. [Citations omitted.] . . .

....

We have no quarrel with the result reached by the Court of Appeals as a matter of policy. If we were writing on a clean slate we would find the Court of Appeals' analysis persuasive. However, where the legislature has spoken, we believe policy setting on an issue such as this is for the elected branch of government. If the legislature disagrees with this longstanding interpretation of the statute, it can correct it. In the meantime, despite any resulting unfairness, punitive damages are not recoverable under the wrongful death statute.

....

Wade urges that he should be able to pursue a loss of consortium claim independently of the wrongful death action, even though his wife's death occurred within a few minutes of the accident. Wade relies on Rogers v. R.J. Reynolds Tobacco Co., 557 N.E.2d 1045, 1057 (Ind. Ct. App. 1990), in which the Court of Appeals concluded that a widow was entitled to recover punitive damages on her separate loss of consortium claim. Wade urges that a loss of consortium claim should be allowed irrespective of whether a spouse is injured or dies instantaneously as a result of the defendant's negligence because to conclude otherwise creates an anomaly in the law. Wade also contends that the independent common law loss of consortium claim permits elements of damages different from those that may be awarded under the wrongful death statute. The loss of consortium is seen as a route to avoid the bar on punitive damages.

As already noted, at common law any cause of action a plaintiff had against a defendant was extinguished by the plaintiff's death, even if the death was caused by the defendant. In response, the wrongful death statute was passed in 1852 and has since provided the sole remedy for the estate and beneficiaries of a deceased plaintiff whose death was caused by the act or omission of the defendant.

....

We agree that loss of consortium is a proper element of damages in a wrongful death action for the death of a spouse. To the extent that our prior case law, most notably Burk v. Anderson, 232 Ind. 77, 81, 109 N.E.2d 407, 408-09 (1952), holds that no loss of consortium damages are recoverable in a wrongful death action for periods after the spouse's death, it is overruled. . . .

....

Wade cites to cases in support of the proposition that loss of consortium damages continue independently of a wrongful death action upon the death of a spouse. However, in all of these cases, the spouse was incapacitated or ill for a significant period of time before death. Cahoon v. Cummings, 734 N.E.2d 535, 538 (Ind. 2000); Mayhue, 653 N.E.2d at 1385-86; R.J. Reynolds, 557 N.E.2d at 1045. . . . Loss of consortium damages do not

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continue beyond the death of the spouse unless the defendant is responsible for the death. The derivative loss of consortium claim is extinguished with the death of the spouse's personal injury claim against the person causing the death. However, loss of consortium damages may be recovered under the wrongful death statute, if the defendant's negligence caused or accelerated the death of the other spouse.

Wade seeks to bring a separate loss of consortium claim in order to recover punitive damages. [Citation omitted.] However, as we reaffirm today, punitive damages are not recoverable in a wrongful death action. Here, because the deceased spouse's claim is governed by the wrongful death statute and is barred as a common law claim, the wrongful death statute also governs the surviving spouse's claim. Thus, even though Wade may recover loss of consortium damages for his life-expectancy or Kathy's, whichever is shorter,

he is restricted to compensation under the wrongful death act and is not independently entitled to punitive damages based upon a loss of consortium claim.

....
SHEPARD, C. J., and SULLIVAN, J., concurred.

RUCKER, J., filed a separate written opinion in which he dissented and in DICKSON, J., concurred, in part, as follows:

In a well-reasoned and persuasive opinion the Court of Appeals concluded that the general wrongful death statute could reasonably be interpreted as allowing punitive damages. I agree and therefore respectfully dissent from the majority's opinion in this case.

....
DAVIDSON v. BOONE COUNTY, No. 06A05-0007-CV-289, ___ N.E.2d ___ (Ind. Ct. App. Apr. 10, 2001).
FRIEDLANDER, J.

Waiver notwithstanding, we conclude that a trial court may *sua sponte* award attorney fees pursuant to I.C. § 34-52-1-1. The statute provides that the court "may" award attorney fees if the court finds that either party has litigated in bad faith or pursued a frivolous, unreasonable, or groundless claim. Further, the statute does not specifically require that the injured party move for an award of attorney fees under the statute before the trial court can exercise its discretion in this regard. We hold, therefore, that the trial court had authority to award attorney fees in this case without a prior request from Boone County. [Citation omitted.]

....
BAILEY and MATTINGLY, JJ., concurred.

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CASE CLIPS TRANSFER TABLE

April 12, 2001

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>Owens Corning Fiberglass v. Cobb</i>	714 N.E.2d 295 49A04-9801-CV-46	Defense should have received summary judgment as plaintiff showed only that he might have been exposed to its asbestos	01-19-00	
<i>Krise v. State</i>	718 N.E.2d 1136 16A05-9809-CR-460	(1) officers' entry into home to serve body attachment not illegal; (2) roommate gave voluntary consent to search; (3) scope of consent extended to defendant's purse located in common bathroom	2-17-00	
<i>Elmer Buchta Trucking v. Stanley</i>	713 N.E.2d 925 14A01-9805-CV-164	(1) Wrongful Death Act mandates recovery of the entire amount of a decedent's lost earnings without an offset for personal maintenance, and (2) defense not entitled to instruction that action not to punish defendant and that any award of damages could not include compensation for grief, sorrow, or wounded feelings	2-17-00	3-26-01, No. 14S01-0002-CV-114. Wrongful death statute does not change rule requiring offset for what decedent would have consumed for personal maintenance and expenses
<i>Rheem Mfg. v. Phelps Htg. & Air Cond.</i>	714 N.E.2d 1218, 49A02-9807-CV-620	1) failure of essential purpose of contract's limited remedy does not, without more, invalidate a wholly distinct term excluding consequential damages; (2) genuine issues of material fact as to whether the cumulative effect of manufacturer's actions was commercially reasonable precluded summary judgment as to validity of consequential damages exclusion; and (3) genuine issues of material fact as to whether distributor acted as manufacturer's agent precluded summary judgment as to warranty claims	3-23-00	
<i>Noble County v. Rogers</i>	717 N.E.2d 591 57A03-9903-CV-124	Claim brought against governmental entity under Trial Rules for wrongfully enjoining a party is not barred by immunity provisions of Indiana Tort Claims Act.	3-23-00	3-27-01, No. 57S03-0003-CV-218. T.R. 65(C) damages available only if gov't acted with bad faith or malice such that court's authority undermined
<i>G & N Aircraft, Inc. v. Boehm</i>	703 N.E.2d 665 49A02-9708-CV-323,	(1) evidence was sufficient to support breach of fiduciary duty claim against majority shareholder; (2) order directing corporation and majority shareholder to buy out minority shareholder at full value of his shares did not violate appraisal provision of dissenter's rights statute; (3) evidence supported finding that corporation breached fiduciary duty to minority .	3-23-00	Nos. 45S05-0003-CV-221, 45A05-9708-CV-323. Direct action by minority shareholder against majority shareholder was permissible under facts; buyout order within court=s equitable discretion; punitives against majority holder were permissible; attorney fees were not authorized by statute or common law for the directactions of minority holder against director

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>Latta v. State</i>	722 N.E.2d 389 46A02-9811-PC-478	Dual representation of wife and husband in murder prosecution left wife with ineffective assistance of counsel, when husband invoked privilege to remain silent when questioned about wife's role, his silence was used against the wife, and counsel did not cross-examine him about his silence, and when counsel's final argument asked jury to assume husband's confession was to cover up wife's crime	3-29-00	3-16-01 No. 46S03-0004-PC-236. Joint representation not error per se, but decision resolved on ineffective assistance basis for failure to have made <i>Bruton</i> objection
<i>Lockett v. State</i>	720 N.E.2d 762 02A03-9905-CR-184	Officer's question whether motorist had any weapons in the car or on his person impermissibly expanded a legitimate traffic stop	3-29-00	
<i>Clear Creek Conservancy District v. Kirkbride</i>	719 N.E.2d 852 67A05-9904-CV-152	Failure to use statutory opportunities to protest and attend hearing on conservancy district assessments did not preclude Trial Rule 60(B)(1) excusable neglect relief from assessments	4-12-00	No. 67S05-0004-CV-00269. Failure to make timely use of statutory opportunities to protest conservancy district assessments precludes Trial Rule 60(B)(1) excusable neglect relief from assessments
<i>Durham v. U-haul International</i>	722 N.E.2d 355 49A02-9811-CV-940	Punitive damages are available in wrongful death actions	5-04-00	4-10-01. Punitive damages are <u>not</u> available in wrongful death actions. Loss of consortium damages are not cut off by spouse's death, and are measured by shorter of decedent's or survivor's life expectancy, but can be obtained only in wrongful death, not in independent action.
<i>Fratus v. Marion Community School Board</i>	721 N.E.2d 280 27A02-9901-CV-12	(1) Indiana Education Employment Relations Board (IEERB) did not have jurisdiction over teachers' claim against union for breach of its duty of fair representation, and (2) IEERB did not have jurisdiction over teachers' tort and breach of contract claims against school board	5-04-00	
<i>Bemenderfer v. Williams</i>	720 N.E.2d 400 49A02-9808-CV-663	Wrongful death action continues despite death of surviving dependent beneficiary during pendency of the action.	5-04-00	4-10-01, No. 49S02-0005-CV-296. Agrees wrongful death action continues despite death of surviving dependent beneficiary during pendency of the action. Does not reach Ct. Appeals conclusions beneficiary's heir could bring separate action and that beneficiary's claim survived because he could have filed his own malpractice action.
<i>McCarthy v. State</i>	726 N.E.2d 789 37A04-9903-CR-108	Reversible error in teacher's sexual misconduct prosecution to prevent his cross-examination of child's mother about her filing notice of tort claim against school and possible intent to sue defendant personally.	6-08-00	
<i>Zimmerman v. State</i>	727 N.E.2d 714 77A01-9909-CV-318	Cases hold no appeal lies from a prison disciplinary action, but here inmate could bring a civil mandate action to compel DOC to comply with a clear statutory mandate.	8-15-00	
<i>Felsher v. City of Evansville</i>	727 N.E.2d 783 82A04-9910-CV-455	University was entitled to bring claim for invasion of privacy; professor properly enjoined from appropriating "likenesses" of university and officials; professor's actions and behavior did not eliminate need for injunction; and injunction was not overbroad..	8-15-2000	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>Dow Chemical v. Ebling</i>	723 N.E.2d 881 22A05-9812-CV-625	State law claims against pesticide manufacturer, with exception of negligent design, were preempted by federal FIFRA pesticide control act; pest control company provided a service and owed duty of care to apartment dwellers, precluding summary judgment.	8-15-00	
<i>Query v. State</i>	725 N.E.2d 129 49A02-9910-CR-733	When police lab test showed substance not meth, prosecutor failure to advise court which issued meth warrant a day before violated 4 th Amendment, and good faith does not save search.	8-25-00	4-11-01. No. 49G20-9811-CF-176141. When State learns material fact for warrant is incorrect magistrate must be advised, and failure to advise makes warrant invalid <i>per se</i> , but here incorrect fact not material as new information itself gave probable cause for another crime.
<i>Sanchez v. State</i>	732 N.E.2d 165 92A03-9908-CR-322	Instruction that jury could not consider voluntary intoxication evidence did not violate Indiana Constitution	9-05-00	
<i>South Gibson School Board v. Sollman</i>	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	
<i>Johnson v. State</i>	725 N.E.2d 984 71A03-9906-CR-225	Threat element of intimidation crime was not proven by evidence defendant showed his handgun to victim	9-14-00	3-09-01, No. 71S03-0009-CR-529. Display of handgun plus "don't even think of it" preceded by obscenities proved intimidation
<i>Poynter v. State</i>	733 N.E.2d 500 57A03-9911-CR-423	At both pretrials Court advised nonindigent defendant he needed counsel for trial and defendant indicated he knew he had to retain lawyer but was working and had been tired; 2 nd pretrial was continued to give more time to retain counsel; trial proceeded when defendant appeared without counsel; record had no clear advice of waiver or dangers of going <i>pro se</i> - conviction reversed.	10-19-00	
<i>Ellis v. State</i>	734 N.E.2d 311 10A05-9908-PC-343	When judge rejected 1 st plea bargain he stated specifically what he would accept; 2 nd agreement incorporated what judge had said was acceptable; P-C.R. denial affirmed, on basis plea voluntary despite judge's "involvement" in bargaining; opinion notes current ABA standards permit court to indicate what it will accept and may be used by trial judges for guidance.	10-19-00	3-23-01. No. 10S05-0010-PC-593. A court may offer guidance as to what sentence it might find marginally acceptable with a plea agreement, taking into account a presentence report prepared by the probation department. The message must not, of course, carry any express or implied threat that the defendant may be denied a fair trial or punished by a severe sentence if he or she declines to plead guilty
<i>Moberly v. Day</i>	730 N.E.2d 768 07A01-9906-CV-216	Fact issue as to whether son-in-law was employee or independent contractor precluded a summary judgment declaring no liability under respondeat superior theory; and Comparative Fault has abrogated fellow servant doctrine.	10-24-00	
<i>Shambaugh and Koorsen v. Carlisle</i>	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of <i>res ipsa loquitur</i> .		

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>S.T. v. State</i>	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	
<i>Tapia v. State</i>	734 N.E.2d 307 45A03-9908-PC-304	Reverses refusal to allow PCR amendment sought 2 weeks prior to hearing or to allow withdrawal of petition without prejudice	11-17-00	
<i>Tincher v. Davidson</i>	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	
<i>Brown v. Branch</i>	733 N.E.2d 17 07A04-9907-CV-339	Oral promise to give house to girlfriend if she moved back not within the statute of frauds.	11-22-00	
<i>New Castle Lodge v. St. Board of Tx. Comm.</i>	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
<i>Gallant Ins. Co. v. Isaac</i>	732 N.E.2d 1262 49A02-0001-CV-56	Insurer 's agent had "inherent authority" to bind insurer, applying case holding corp. president had inherent authority to bind corp. to contract	11-22-00	
<i>Reeder v. State</i>	732 N.E.2d 1246 49A05-9909-CV-416	When filed, expert's affidavit sufficed to avoid summary judgment but affiant's death after the filing made his affidavit inadmissible and hence summary judgment properly granted.	1-11-01	
<i>Holley v. Childress</i>	730 N.E.2d 743 67A05-9905-JV-321	Facts did not suffice to overcome presumption noncustodial parent was fit so that temporary guardianship for deceased custodial parent's new spouse was error.	1-11-01	
<i>Cannon v. Cannon</i>	729 N.E.2d 1043 49A05-9908-CV-366	Affirms decision to deny maintenance for spouse with ailments but who generated income with garage sales	1-11-01	
<i>City of New Haven v. Reichhart and Chemical Waste Mgmt. of IN</i>	729 N.E.2d 600 99A02-9904-CV-247	Challenge to annexation financed by defendant's employer was exercise of First Amendment petition right and 12(B)(6) dismissal of city's malicious prosecution claim was properly granted.	1-11-01	
<i>Davidson v. State</i>	735 N.E.2d 325 22A01-0004-PC-116	Ineffective assistance for counsel not to have demanded mandatory severance of charges of "same or similar character" when failure to do so resulted in court's having discretion to order consecutive sentences.	1-17-01	
<i>Griffin v. State</i>	735 N.E.2d 258 49A02-9909-CR-647	Three opinion resolution on admissibility under Ev. Rule 606 of juror affidavits on participation of alternate in deliberations - op. 1 affidavits inadmissible; op 2 affidavits admissible but no prejudice shown, op 3 affidavits admissible and prejudice	1-17-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>Leshore v. State</i>	739 N.E.2d 1075 02A03-0007-CR-234	(1) Writ of body attachment on which police detained defendant was invalid on its face for failure to include bail or escrow amount, and (2) defendant's flight from detention under the writ did not amount to escape.	1-29-01	
<i>Rogers v. R.J. Reynolds Tobacco</i>	731 N.E.2d 6 49A02-9808-CV-668	(1) trial court committed reversible error by making ex parte communication with deliberating jury, in which jury was advised that it could hold a press conference after its verdict was read, without giving notice to parties; (2) denial of plaintiff's motion for relief from judgment, which was based on public statements by director of one of manufacturers, was within court's discretion; (3) jury was properly instructed on doctrine of incurred risk; (4) evidentiary rulings were within court's discretion; and (5) leave to amend complaint was properly denied	2-09-01	
<i>Mercantile Nat'l Bank v. First Builders</i>	732 N.E.2d 1287 45A03-9904-CV-132	materialman's notice to owner of intent to hold personally liable for material furnished contractor, IC 32-8-3-9, sufficed even though it was filed after summary judgment had been requested but not yet entered on initial complaint for mechanic's lien foreclosure	2-09-01	
<i>State Farm Fire & Casualty v. T.B.</i>	728 N.E.2d 919 53A01-9908-CV-266	(1) insurer acted at its own peril in electing not to defend under reservation of rights or seek declaratory judgment that it had no duty to defend; (2) insurer was collaterally estopped from asserting defense of childcare exclusion that was addressed in consent judgment; (3) exception to child care exclusion applied in any event; and (4) insurer's liability was limited to \$300,000 plus postjudgment interest on entire amount of judgment until payment of its limits.	2-09-01	
<i>Merritt v. Evansville Vanderburgh School Corp</i>	735 N.E.2d 269 82A01-912-CV-421	error to refuse to excuse for cause two venire persons employed by defendant even though they asserted they could nonetheless be impartial and attentive	2-09-01	
<i>IDEM v. RLG, Inc</i>	735 N.E.2d 290 27A02-9909-CV-646	the weight of authority requires some evidence of knowledge, action, or inaction by a corporate officer before personal liability for public health law violations may be imposed. Personal liability may not be imposed based solely upon a corporate officer's title.	2-09-01	
<i>State v. Gerschoffer</i>	738 N.E.2d 713 72A05-0003-CR0116	Sobriety checkpoint searches are prohibited by Indiana Constitution.	2-14-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
<i>Healthscript, Inc. v. State</i>	724 N.E.2d 265, <i>rhrg.</i> 740 N.E.2d 562 49A05-9908-CR-370	Medicare fraud crimes do not include violations of state administrative regulations.	2-14-01	
<i>Vadas v. Vadas</i>	728 N.E.2d 250 45A04-9901-CV-18	Husband's father, whom wife sought to join, was never served (wife gave husband's attorney motion to join father) but is held to have submitted to divorce court's jurisdiction by appearing as witness; since father was joined, does not reach dispute in cases whether property titled to third parties not joined may be in the marital estate.	3-01-01	
<i>N.D.F. v. State</i>	740 N.E.2d 574 49A02-0006-CR-383	Juvenile determinate sentencing statute was intended to incorporate adult habitual criminal offender sequential requirements for the two "prior unrelated delinquency adjudications"; thus finding of two prior adjudications, without finding or evidence of habitual offender-type sequence, was error	3-02-01	
<i>Smith v. State</i>	734 N.E.2d 706 49A02-0005-CR-300	Retaining defendant's DNA profile from a prior unrelated case and using it in new case no violation of state or federal Constitutions or of DNA database statute.	3-27-01	3-27-01. Retaining defendant's DNA profile from a prior unrelated case and using it in new case no violation of state or federal Constitutions. Retention not authorized by database statute, but lack of authorization not a basis for invoking exclusionary rule.
<i>Robertson v. State</i>	740 N.E.2d 574 49A02-0006-CR-383	Hallway outside defendant's apartment was part of his "dwelling" for purposes of handgun license statute.	3-09-01	
<i>Bradley v. City of New Castle</i>	730 N.E.2d 771 33A01-9807-CV-281	Extent of changes to plan made in proceeding for remonstrance to annexation violated annexation fiscal plan requirement;	4-06-01	
<i>King v. Northeast Security</i>	732 N.E.2d 824 49A02-9907-CV-498	School had common law duty to protect student from criminal violence in its parking lot; security company with parking lot contract not liable to student under third party beneficiary rationale.	4-06-01	
<i>State v. Hammond</i>	737 N.E.2d 425 41A04-0003-PC-126	Amendment of driving while suspended statute to require "validly" suspended license is properly applied to offense committed prior to amendment, which made "ameliorative" change to substantive crime intended to avoid supreme court's construction of statute as in effect of time of offense.	4-06-01	